

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|---------------------------|--|------------------------------------|--|
| Investigator: Stephen DiFiore | Team: Squad #7 | CCRB Case #: 201908825 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Friday, 09/27/2019 3:15 PM | Location of Incident: 109-02 Brewer Boulevard | Precinct: 103 | 18 Mo. SOL 3/27/2021 | EO SOL 11/11/2021 | |
| Date/Time CV Reported Fri, 09/27/2019 5:32 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 10/08/2019 11:02 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. SGT Roy Rodriguez | 05012 | 947944 | 103 PCT |
| 2. POM Matthew Langone | 18454 | 943463 | 103 PCT |
| 3. POM Paul Faulk | 03895 | 962395 | 103 PCT |
| 4. POM Alex Hojnowski | 21985 | 952855 | 103 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.POM Alex Hojnowski | Abuse: Police Officer Alex Hojnowski stopped § 87(2)(b) | |
| B.POM Paul Faulk | Abuse: Police Officer Paul Faulk threatened § 87(2)(b) with the use of force. | |
| C.POM Matthew Langone | Force: Police Officer Matthew Langone used physical force against § 87(2)(b) | |
| D.SGT Roy Rodriguez | Force: Sergeant Roy Rodriguez used physical force against § 87(2)(b) | |

Case Summary

On September 27, 2019, the following complaint was filed with IAB, and it was received by the CCRB on October 8, 2019. BWC footage was obtained for this case (Board Review 01-04).

On September 27, 2019 at approximately 3:15 p.m., at the instruction of PO Alex Hojnowski of the 103rd Precinct, PO Matthew Langone, also of the 103rd Precinct stopped § 87(2)(b) outside of 109-02 Guy R. Brewer Boulevard in Queens to give him a summons for § 87(2)(b) (Allegation A: Abuse of Authority, § 87(2)(g)) PO Langone was joined by PO Paul Faulk and Sgt. Roy Rodriguez, also of the 103rd Precinct. § 87(2)(b) refused to give his identification to the officers, at which point the officers attempted to place him under arrest. PO Faulk pointed his taser at § 87(2)(b) to gain compliance (Allegation B: Abuse of Authority, § 87(2)(g)) While walking § 87(2)(b) to the RMP, PO Langone and Sgt. Rodriguez allegedly tripped § 87(2)(b) pushed him to the ground, and dragged his body along the ground (Allegations C and D: Force, § 87(2)(g))

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Alex Hojnowski stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Paul Faulk threatened § 87(2)(b) with the use of force.

According to PO Langone's memo book, PO Alex Hojnowski, PO Langone's partner, had seen § 87(2)(b) smoking a marijuana cigarette at approximately 3:15 p.m. on September 27, 2019 (Board Review 05). PO Hojnowski elaborated further in his CCRB interview that he saw § 87(2)(b) fill an old cigar with a green vegetative substance from a clear bag before looking around and smoking it, and that he saw this through a set of binoculars (Board Review 06). In his CCRB interview, PO Langone said that PO Hojnowski relayed this information to him over the radio, providing a description which matched that of § 87(2)(b) (Board Review 07). According to PO Hojnowski's CCRB statement, he did not remember exactly what the description was but noted that he would have provided a description of clothing, facial hair, and any other identifying features. PO Langone, PO Faulk, and Sgt. Rodriguez approach the crowd that had been congregating roughly thirty feet from the entrance Nolasco Grocery at the corner and walk directly to § 87(2)(b) Upon approaching, PO Langone noticed tobacco on the floor next to § 87(2)(b) and smelled marijuana. § 87(2)(b) wearing a black t-shirt with black pants, acknowledges the tobacco on the floor on camera (Board Review 04). PO Langone asked § 87(2)(b) for his identification, which § 87(2)(b) refused to provide. In his statement, § 87(2)(b) denied that he was smoking marijuana, and said that he did not want to provide his identification because he was on parole and was afraid that he would be in violation if any record of police contact, including a summons, was made (Board Review 08). A crowd of roughly ten people was also present at the scene, many of whom were shouting at the officers that § 87(2)(b) was not smoking weed.

PO Langone asked for § 87(2)(b)'s identification multiple times and warned that he could be arrested if he did not provide it. After numerous attempts to get § 87(2)(b)'s identification, PO Langone put his hands on § 87(2)(b)'s arms to place them behind his back

and place him under arrest with the assistance of PO Faulk and Sgt. Rodriguez. In his CCRB statement, § 87(2)(b) said that he never attempted to resist arrest and only asked why they were arresting him when he was not smoking marijuana. During this process, Sgt. Rodriguez's BWC shows § 87(2)(b) push his arms forward to prevent the officers from placing them behind his back at 2:00 in the video player (Board Review 01), at which point PO Faulk points his taser at § 87(2)(b) and Sgt. Rodriguez says, "You're about to get tased."

People v. De Bour, 40 N.Y.2d 210 holds in sum that police may stop someone when there is reasonable suspicion that illegal activity is present (Board Review 09)

Patrol Guide Procedure 221-02 defines active resisting as "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signalling an intention to avoid or prevent being taken into or retained in custody" (Board Review 10). Patrol Guide Procedure 221-08 lists "Whether the subject is actively resisting custody," and "Presence of hostile crowd or agitators" as factors to consider before use of a CEW (Board Review 11). Patrol Guide Procedure 221-08 also says to "Issue, if possible, an appropriate verbal warning, consistent with personal safety, to the intended subject and other members of the service present prior to discharging the CEW."

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Matthew Langone used physical force against § 87(2)(b)

Allegation (D) Force: Sergeant Roy Rodriguez used physical force against § 87(2)(b)

According to PO Langone, § 87(2)(b)'s body became limp as they walked to the vehicle as the result of a seizure that caused § 87(2)(b) to fall and PO Langone to fall with him. In his interview, § 87(2)(b) said that PO Langone and Sgt. Rodriguez tripped him and pushed him to the ground as they walked him to the RMP. After § 87(2)(b) landed on the ground, he said they dragged him along the ground. § 87(2)(b) said in his statement that he has no history of seizures or passing out, but that it was possible that happened during the incident because he did not have a good memory of the incident.

PO Langone's second BWC depicts § 87(2)(b) saying, "take my phone," to an individual at 15:29:34 (Board Review 02). Someone in the background can be heard saying, "you're not getting his phone." Upon being presented with this, PO Langone said that he did not remember any comments being made about § 87(2)(b)'s phone but said that all of a person's property must be vouchered one they are under arrest in order to make sure that it is not lost and to protect the NYPD from accusations of theft. § 87(2)(b) was under arrest at that point.

At approximately 15:29:41, § 87(2)(b) falls to the ground on his face and PO Langone appears to fall to his knees next to him. Shortly afterwards, § 87(2)(b) says, "I had a seizure" multiple times while slurring his words, at one point saying, "I got a seevur" [spelled as § 87(2)(b) pronounced it in the video].

PO Faulk's BWC shows that both PO Faulk and Sgt. Rodriguez were not making contact with § 87(2)(b) at the time at which he fell because they were dealing with members of the crowd who were trying to get § 87(2)(b)'s phone (Board Review 03).

In a field interview with an unverified witness who gave the name § 87(2)(b) a worker at § 87(2)(b), § 87(2)(b) said that § 87(2)(b) fell on his own and that he witnessed this from just outside the entrance to the store about thirty feet from the incident (Board Review 12). § 87(2)(b) specifically said that § 87(2)(b) appeared to have tripped on the sidewalk and added that he saw no force used by the officers against § 87(2)(b)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- PO Matthew Langone has been a member of service for 13 years and has been a subject in two other complaints and two other allegations, none of which were substantiated.
- Sgt. Roy Rodriguez has been a member of service for 11 years and has been a subject in four other complaints and seven other allegations, none of which were substantiated.
- PO Paul Faulk has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation due to § 87(2)(b)s arrest.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator: Stephen J. DiFiore Inv. Stephen DiFiore August 11, 2020
Signature Print Title & Name Date

Squad Leader: _____ Vanessa Rosen August 11, 2020

Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____